THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

WRIT PETITION No.25032 OF 2005

DATED: 28-11-2005

Between:

Sumo Foods Private Limited,

Rep. by its Director, S. Ramakanth,

7-4-40, Gaganpahad Industrial Area,

Hyderabad – 501 323.

.. Petitioner

AND

The Commercial Tax Officer,

Rajendranagar Circle, Hyderabad

.. Respondent

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THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

WRIT PETITION No.25032 OF 2005

ORDER: (Per Hon'ble Mr. Justice B. Sudershan Reddy)

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue Writ of *Certiorari* and to call for the records relating to the penalty order of the Commercial Tax Officer-respondent in Rc.No.SAR/02/3/2883/2004-2005 (PENALTY), dated 27-10-2005, and quash the same.

The petitioner is a company registered under the Companies Act, 1956. It is a dealer carrying on business in manufacture of biscuits. There is no controversy that the petitioner has been declared as eligible for incentives under G.O. Ms. No.108, Industries & Commerce Department, dated 20-05-1996, and accordingly it was extended Tax Holiday benefit subject to a maximum of Rs.1,85,81,670/- which could be availed for a period of seven years from the date of commencement of commercial production.

The petitioner claims to be engaged in sale of its own brand product (biscuits) apart from undertaking job work for manufacture of other branded products of other companies.

Be that as it may, the respondent herein issued show cause notice, dated 27-10-2005, proposing to levy penalty of Rs.1,42,13,160/- under Section 5-B(2)(ii) of the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the Act') on the purported ground that the purchase of Light Diesel Oil by the petitioner against 'G' Form and use of the same for manufacture of the branded biscuits of Parle

Products as part of the job work is in violation of Section 5-B(2)(ii) of the Act, hence the petitioner is liable to pay the penalty at five times the tax payable on the purchase turnover. The petitioner promptly filed its explanation on 19-10-2005, *inter alia,* contending that Section 5-B(2)(ii) of the Act does not attract the fact situation on hand since it does not fall under either of the limbs mentioned in clause (i) and (ii) of the said
sub-section and in any event use of the Light Diesel Oil in the course of manufacturing of biscuits is not in violation of Section 5-B(2)(ii) of the Act.

The respondent herein passed the impugned order, dated 27-10-2005, holding that use of the Light Diesel Oil in the course of manufacture tantamounts to deemed sale of oil, therefore the petitioner is liable to pay penalty. This is not one of the grounds alleged against the petitioner in the show cause notice, but, admittedly, the petitioner was also not put on notice on this aspect of the matter. The conclusion drawn by the authority is at variance with the show cause notice issued requiring the petitioner to submit its explanation.
It amounts to passing of order without putting the petitioner on notice. The petitioner is entitled to succeed on this short ground viz., the order being in violation of the principles of natural justice. The impugned order is accordingly set aside.

The Writ Petition is accordingly allowed. No order as to costs.

However, this order shall not preclude the respondent herein to put the petitioner on proper notice and pass appropriate orders after providing an opportunity of being heard.

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B. SUDERSHAN REDDY, J

Date:28-11-2005

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S. ANANDA REDDY, J

NOTE:

Furnish C.C. of the order by 30-11-2005.

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